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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re

Case No. 15-11120-B-7

Nancy V. Angwin,

Debtor.

United States,

Adv. Proc. No. 15-01080

Plaintiff,

DC No. USA-1

v.

Nancy V. Angwin,

Defendant.

**MEMORANDUM DECISION REGARDING MOTION
FOR SUMMARY JUDGMENT**

Jeffrey J. Lodge, Esq., Assistant United States Attorney, appeared on behalf of the moving party and plaintiff, United States, acting on behalf of its agency, the Social Security Administration.

The defendant, Nancy V. Angwin, appeared *in propria persona*.

Before the court is a motion for summary judgment (the "Motion") brought by the plaintiff in this adversary proceeding, the United States on behalf of the Social Security Administration ("SSA"). The Motion is opposed by the defendant and debtor, Nancy V. Angwin ("Angwin"). The SSA seeks a declaration that it is entitled to recoup approximately \$190,000 of pre-petition Social Security Disability Insurance ("SSDI") overpayments ("Overpayment") from post-petition SSDI benefits to which Angwin appears to be otherwise entitled ("Post-Petition Benefits").¹ An

¹The court is not finding here that Angwin is entitled to any Post-Petition Benefits. That issue is not before the court. The SSA states that Angwin applied

1 administrative law judge (“ALJ”) has already determined Angwin’s liability
 2 for the Overpayment and liquidated the amount of the SSA’s claim against
 3 Angwin (“SSA’s Claim”). For the reasons set forth below, the Motion will
 4 be denied and the SSA’s second claim for relief will be dismissed.²

5 The bankruptcy court has jurisdiction over this adversary proceeding
 6 pursuant to 28 U.S.C. § 1334, 11 U.S.C. §§ 541 and 522, and General
 7 Orders No. 182 and 330 of the U.S. District Court for the Eastern District of
 8 California.³ This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A)
 9 & (O).

10 **BACKGROUND.**

11 In this Motion, SSA seeks a determination of its right to recoup the
 12 Overpayment from Angwin’s Post-Petition Benefits.⁴ Many years ago,
 13 Angwin was the disabled adult child of a person who was receiving SSDI

14 _____
 15 for Post-Petition Benefits. Her eligibility for Post-Petition Benefits of any kind is
 16 implicit in the fact that the SSA is seeking to recover the Overpayment from those
 17 Benefits

18 ²The recoupment issue was raised in the SSA’s second claim for relief.
 19 The SSA also alleged in first claim for relief that Angwin’s liability for the
 20 Overpayment is excepted from discharge under a 11 U.S.C. § 523(a)(2)(A) fraud
 21 theory. By prior order, the fraud claim has been bifurcated and stayed pending a
 22 resolution of the recoupment issue. By a separate order, the adversary proceeding
 23 will be set for a further status conference and move forward with the first claim
 24 for relief.

25 ³Unless otherwise indicated, all chapter, section and rule references are to
 26 the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of
 27 Bankruptcy Procedure, Rules 1001-9036, as enacted and promulgated *after*
 28 October 17, 2005, the effective date of The Bankruptcy Abuse Prevention and
 Consumer Protection Act of 2005, Pub. L. 109-8, Apr. 20, 2005, 119 Stat. 23.

⁴The ALJ determined that, after Angwin's husband died, she applied for
 and was awarded Disability Benefits, widow's benefits, and survivor benefits for
 her three children. In the complaint, the SSA appears to seek recoupment only
 from Angwin's Post-Petition Disability Benefits. The statutory limitations on
 recoupment appear to have been changed by recent federal legislation (Bipartisan
 Budget Act of 2015).

1 benefits. As such, Angwin also qualified for and received SSDI benefits
2 from the SSA ("Disability Benefits"). However, Angwin was married for
3 many of the years she received Disability Benefits, which made her
4 ineligible for those Benefits. Angwin was still receiving Disability Benefits
5 when her husband died in September 2011. Subsequently, the SSA learned
6 of Angwin's marriage. In November 2011, the SSA notified Angwin that
7 her marriage had disqualified her from receiving benefits and that she had
8 been overpaid. (Motion for Summary Judgment, *supra*, Exhibit 1, p. 3,
9 Social Security Administration, Office of Disability Adjudication and
10 Review, First Amended Decision.) Altogether, she was overpaid Disability
11 Benefits totaling \$214,372.90. The SSA demanded reimbursement of the
12 Overpayment. Angwin requested a waiver of the Overpayment, which the
13 SSA denied.

14 Prior to the filing of this chapter 7 bankruptcy petition, the SSA's
15 claim for reimbursement of the Overpayment was fully adjudicated before
16 an ALJ. In that decision, the ALJ did waive a portion of the Overpayment.
17 However, the ALJ found Angwin at fault for not properly reporting her
18 change in marital status and liable for the balance, \$190,042.90 (the "ALJ
19 Judgment"). Angwin did not appeal the ALJ Judgment and that decision is
20 now final. Based on that Judgment, the amount of the SSA's claim has
21 been liquidated for purposes of this adversary proceeding and cannot now
22 be revisited by this court.⁵

23 Angwin filed a response to the Motion, but she did not contest any of
24 the pertinent facts. Based on the SSA's separate statement of undisputed
25

26 ⁵Angwin appeared at the hearing and stated that she disputes the amount of
27 the ALJ Judgment. The court explained to Angwin that the amount of the
28 Judgment has already been determined. The only issue in this adversary
proceeding is whether collection of the ALJ Judgment is barred by Angwin's
chapter 7 discharge.

1 facts, the findings in the ALJ Judgment, and documents in the record to
 2 which the court has taken judicial notice, the following facts appear to be
 3 undisputed:

4 1. Angwin was overpaid Social Security benefits in the amount of
 5 \$214,372.90 during the period February 13, 1993 to September 1,
 2011 (20 CFR 404.504).

6 2. Angwin was at fault in causing the Overpayment (20 CFR
 7 404.506(a), 404.507, and 404.510a).

8 3. Repayment of \$24,330.00, which represents the period from
 February 2010 through September 2011, was waived by the ALJ.

9 4. Recovery of the balance was not waived and Angwin is liable for
 10 repayment of \$190,042.90, but not liable for \$24,330.00 during the
 period February 13, 1993 to September 1, 2011 (20 CFR 404.506).

11 **ISSUE PRESENTED.**

12 In this adversary proceeding, the SSA prays for a determination that
 13 its right to recover the Overpayment, as liquidated in the ALJ Judgment, is
 14 nondischargeable and/or subject to recoupment from Angwin's Post-
 15 Petition Benefits.⁶ This Motion deals solely with the recoupment issue pled
 16 in the SSA's second claim for relief. The legal issues raised therein are: 1)
 17 whether the doctrine of recoupment applies to the Overpayment on the
 18 undisputed facts of this case; and, if so, (2) whether recoupment of the
 19 Overpayment is subject to the chapter 7 discharge injunction. Based on the
 20 ruling below on the first issue, the second issue is irrelevant and will not be
 21 addressed.

22 **SUMMARY JUDGMENT STANDARD.**

23 Summary judgment in favor of the moving party is appropriate "if
 24 the movant shows that there is no genuine dispute as to any material fact
 25

26 ⁶It is not clear whether the SSA offset or recouped any of the Overpayment
 27 from Angwin's Disability Benefits between the issuance of the ALJ Judgment in
 28 2013, and the commencement of this bankruptcy in 2015. The SSA only seeks a
 determination of its right to enforce the ALJ Judgment and recover the
 Overpayment from Post-Petition Benefits.

1 and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P.
2 56(a), *incorporated by* Fed. R. Bankr. P. 7056. “[T]he mere existence of
3 *some* alleged factual dispute between the parties will not defeat an
4 otherwise properly supported motion for summary judgment; the
5 requirement is that there be no *genuine* issue of *material* fact.” *Anderson v.*
6 *Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986) (emphasis in original).
7 “A fact is ‘material’ when, under the governing substantive law, it could
8 affect the outcome of the case.” *Thrifty Oil Co. v. Bank of Am. Nat’l Trust*
9 *& Sav. Ass’n*, 322 F.3d 1039, 1046 (9th Cir. 2003).

10 The parties may use summary judgment to dispose of all or part of
11 the asserted claims for relief. *See* Fed. R. Civ. P. 56(a). Additionally, the
12 court may *sua sponte* grant summary judgment in favor of the nonmoving
13 party, as long as “the moving party against whom summary judgment [is]
14 rendered had a full and fair opportunity to ventilate the issues involved in
15 the motion.” *Cool Fuel, Inc. v. Connett*, 685 F.2d 309, 312 (9th Cir. 1982).
16 The filing of a formal cross-motion is not necessary. *See* Fed. R. Civ. P.
17 56(f); *Portsmouth Square, Inc. v. Shareholders Protective Comm.*, 770 F.2d
18 866, 869 (9th Cir. 1985).

19 As noted above, with regard to liquidation of the SSA’s claim and
20 the recoupment issue, there are no disputed issues of material fact. All of
21 the facts necessary to decide that issue have been fully and fairly presented
22 by the SSA in the Motion and supporting papers. Therefore, the
23 recoupment issue appears to be ripe for summary adjudication.

24 **ANALYSIS AND CONCLUSIONS OF LAW.**

25 **The Statutory Basis for the SSA’s Claim.** Under 42 U.S.C.
26 chapter 7, the SSA administers the Social Security Act which provides for
27 the payment of SSDI benefits to disabled individuals and Supplemental
28 Security Income (“SSI”) benefits to disabled individuals with limited

1 income and resources. The SSDI program also provides benefits, generally,
2 to the unmarried, disabled child of a person who is eligible to receive SSDI
3 payments, if their child became disabled before age 22. 42 U.S.C.
4 § 402(d)(1); 20 C.F.R. §§ 404.350(c) and 404.352(4). In its pleadings, the
5 SSA describes the SSDI program as “a payroll tax-funded, federal
6 insurance program of the United States government. It is managed by the
7 Social Security Administration and is designed to provide income
8 supplements to people who are physically restricted in their ability to be
9 employed because of a disability.” (First Amended Complaint, ¶ 2.) In a
10 recent decision, *Adinolfi v. Meyer (In re Adinolfi)*, 543 B.R. 612 (9th Cir.
11 BAP 2015), the Ninth Circuit Bankruptcy Appellate Panel described the
12 general purpose of the SSA programs “to benefit people who are needy in
13 some respect; they are aged, sick, physically or mentally disabled, suffering
14 from family separation or abuse, or the like.” *Id.* at 620.⁷

15 Initially, Angwin began receiving SSDI benefits as the disabled child
16 of a parent who was also eligible for SSDI benefits. However, SSDI
17 recipients are subject to reporting responsibilities, which may limit their
18 eligibility for further SSDI benefits. Recovery of overpayments is
19 authorized pursuant to regulations providing that SSA may withhold future
20 monthly benefits. 20 C.F.R. § 404.502. (Motion for Summary Judgment,
21 November 18, 2015, pp. 2-3.)

22 **The Recoupment Doctrine in the Ninth Circuit.** In short, the SSA
23 seeks to recover the Overpayment from Angwin’s Post-Petition Benefits by
24 suspending or reducing those payments until the Overpayment is satisfied.
25 Given the amount of the ALJ Judgment, a ruling in favor of the SSA will
26

27 ⁷In *Adinolfi*, the panel found that Adoption Assistance Program payments
28 under a Social Security Administration program do not count toward a debtor’s
ability to repay creditors.

1 presumably result in a significant reduction or complete suspension of
2 Angwin's right to receive any benefits from the SSA for much, if not all of
3 her remaining natural life.

4 Two related but distinct legal doctrines, setoff and recoupment, may
5 operate to reduce a creditor's claim through the application or adjustment
6 of debts and credits owed between the creditor and debtor. The first
7 doctrine, setoff, arises out of different and independent transactions
8 between the debtor and the creditor. Section 553 provides that the pre-
9 petition amounts owed by each party to one another may be setoff without
10 regard to priority, unless the creditor's claim is otherwise avoidable. Setoff
11 applies only when the parties are identical and the obligation is mutual. A
12 creditor holding the right of setoff is a secured creditor to the extent of the
13 setoff. § 506(a)(1). Since the SSA is not here seeking to recover its claim
14 against pre-petition benefits, the doctrine of setoff is not before the court.
15 The automatic stay applies to the right of setoff against pre-petition claims.
16 The discharge injunction applies to the right of setoff against post-petition
17 claims. *See* Bankruptcy Law Manual, 5th, 2015-1 Edition § 6:67.

18 The second doctrine is recoupment. Recoupment is an equitable
19 doctrine which the Bankruptcy Code does not mention or define.⁸ It has
20 been defined as, "[t]he withholding, for equitable reasons, of all or part of
21 something that is due." Black's Law Dictionary 1302 (8th ed. 2004). The
22 bankruptcy courts have recognized the doctrine of recoupment as "the
23 setting up of a demand arising from the *same transaction* as the plaintiff's
24 claim or cause of action, strictly for the purpose of abatement or reduction
25

26
27 ⁸The discussion of recoupment in the following pages is quoted almost
28 verbatim from this court's 2004 published opinion in *Braun v. Bouma Dairy (In re Coast Grain Co.)*, 317 B.R. 796, 806-8 (Bankr. E.D.CA.2004). The basic principals have not changed and are still applicable here.

1 of such claim.” *Newbery Corporation v. Fireman’s Fund Ins. Co. (In re*
 2 *Newbery Corp.)*, 95 F.3d 1392, 1399 (9th Cir. 1996).

3 Recoupment is an equitable doctrine. *Id.* at 1401. It has been
 4 explained and distinguished from the setoff defense as follows:

5 The main distinction between the doctrines of setoff
 6 and recoupment is that setoff is a form of cross action that
 7 depends in its application upon the existence of two separate,
 8 mutual obligations. Absent a right of setoff, each obligation
 9 would be independently enforceable. Moreover, rights of
 10 setoff most often arise between obligations stemming from
 11 separate transactions or events

12 In contrast, recoupment is in the nature of a right to
 13 reduce the amount of a claim, and does not involve
 14 establishing the existence of independent obligations. *By*
 15 *definition, recoupment may arise only out of the “same*
 16 *transaction” or occurrence that gives rise to the liability*
 17 *sought to be reduced.*

18 Recoupment often arises in contract cases, but it is not
 19 limited to contractual obligations, nor must the amount to be
 20 recouped be liquidated in order for the right to apply.
 21 Mutuality is also not required, and the relevant obligations
 22 need not both be prepetition in nature. Moreover, although
 23 the courts are split on the issue, the better view is that the
 24 automatic stay does not apply to bar or restrain a legitimate
 25 right of recoupment because, *properly construed, recoupment*
 26 *applies to define the obligation in question, rather than*
 27 *establish or enforce a separate debt.*

28 5 *Collier on Bankruptcy*, (15th ed. rev.) ¶ 553.10, pg. 553-99-100 (emphasis
 added).

 The Supreme Court has observed that “a bankruptcy defendant can
 seek recoupment by meeting a plaintiff-debtor’s claim with a counter claim
 arising out of the same transaction.” *Reiter v. Cooper*, 507 U.S. 258, 265
 n.2, 113 S.Ct. 1213 (1993). In *Reiter*, the Court also observed that
 “[r]ecoupment permits a determination of the ‘just and proper liability on
 the main issue’ and involves ‘no element of preference.’” *Id.* at n.2, citing 4
Collier on Bankruptcy, (15th ed. 1991) ¶ 553.03, pg. 553-17.

 The Ninth Circuit Court of Appeals has also observed that

1 recoupment does not run afoul of the Bankruptcy Code's ratable
2 distribution policy. *Newbery Corp.*, 95 F.3d at 1398. The recoupment
3 doctrine draws its authority from principles of equity and is thereby subject
4 to the facts in each individual case. Recoupment "is allowed 'because it
5 would be inequitable not to allow the defendant to recoup those payments
6 against the debtor's subsequent claim.'" *Aetna U.S. Healthcare, Inc. v.*
7 *Madigan (In re Madigan)*, 270 B.R. 749, 754 (9th Cir. BAP 2001) citing
8 *Newbery Corp.*, 95 F.3d at 1401.

9 For recoupment to apply, the competing claims must arise out of the
10 "same transaction" or occurrence. *Newbery Corp.*, 95 F.3d at 1399. *See*
11 *also TLC Hospitals, Inc.*, 224 F.3d at 1011. To determine whether the
12 claims arise from the same transaction, the Ninth Circuit has adopted a
13 "logical relationship" test. *Madigan*, 270 B.R. at 755. *See also Newbery*
14 *Corp.*, 95 F.3d at 1402; *TLC Hospitals*, 224 F.3d at 1012. The term
15 "transaction" is flexible under the logical relationship test. *Newbery Corp.*,
16 95 F.3d at 1402. Courts applying this standard "have permitted a variety of
17 obligations to be recouped against each other, requiring only that the
18 obligations be sufficiently interconnected so that it would be unjust to insist
19 that one party fulfill its obligation without requiring the same of the other
20 party." *Madigan*, 270 B.R. at 755, citing 5 *Collier on Bankruptcy*, ¶
21 553.10[1].

22 The concept of a "logical relationship" is not unrestrained. The
23 Ninth Circuit has expressly cautioned that, generally, in the commercial
24 setting, the "logical relationship" concept should not be applied "so loosely
25 that multiple occurrences in any continuous commercial relationship would
26 constitute one transaction." *Madigan*, 270 B.R. at 757, citing *TLC*
27 *Hospitals*, 224 F.3d at 1012.

28 In *Newbery Corp.*, the chapter 11 debtor had defaulted on a bonded

1 construction project. Newbery Corp., the debtor, then entered into an
2 agreement with its lender and with its surety, Fireman's Fund, whereby
3 Fireman's Fund would complete Newbery's unfinished projects using the
4 lender's collateral, Newbery's equipment. Fireman's Fund agreed to pay
5 rent to the lender for use of the equipment. The projects were completed
6 but Fireman's Fund failed to pay the rent. In the course of the chapter 11
7 proceeding, the lender assigned its rental claim back to Newbery. Newbery
8 sued for the rent and Fireman's Fund moved for summary judgment on the
9 defense of recoupment - Fireman's Fund sought to recoup its losses on the
10 defaulted bonds against the rental obligation. Ruling in favor of Fireman's
11 Fund, the court reasoned that the rent obligation stemmed directly from
12 Newbery's default of the bonded contract. Applying the logical relationship
13 test, the court held that Newbery's claim for equipment rental and
14 Fireman's Fund's claim for indemnification arose from the same
15 transaction. *Id.* at 1403.

16 In *TLC Hospitals*, the debtor was a Medicare provider under contract
17 with the U.S. Dept. of Health and Human Services ("HHS"). The court
18 allowed HHS to recoup pre-petition Medicare overpayments from post-
19 petition Medicare estimated payments. The court examined the terms of the
20 Medicare provider agreement and its statutory and regulatory
21 underpinnings. It concluded that the Medicare system, which contemplated
22 the making of estimated payments by HHS, and post-audit adjustments to
23 reimburse HHS for overpayments, did constitute a single transaction for
24 purposes of recoupment even though the separate components of the
25 transaction occurred at different times. *TLC Hospitals*, 224 F.3d at 1012.

26 In both *Newbery Corp.* and *TLC Hospitals*, the court looked, *inter*
27 *alia*, to the legal obligations of the parties as the foundation for a "logical
28 relationship" between the competing claims. In *Newbery Corp.*, the court,

1 in essence, applied a “proximate cause” test to connect the competing
2 claims – but for Newbery’s breach of the construction contract, Fireman’s
3 Fund would not have had to rent the equipment. The court also noted that
4 Newbery was contractually obligated to indemnify Fireman’s Fund for its
5 losses. The opposing claims arose from and were “intertwined” with the
6 same contracts and acts of the parties. *Newbery Corp.*, 95 F.3d at 1403.
7 Similarly, in *TLC Hospitals*, the court found evidence of Congressional
8 intent to connect the estimated payment and post-audit reimbursement
9 transactions based on the contracts and Medicare’s statutory scheme. *In re*
10 *TLC Hospitals*, 224 F.3d at 1013 (citing *United States v. Consumer Health*
11 *Servs. of Am., Inc.*, 108 F.3d 390, 395 (D.C. Cir. 1997)). The “logical
12 relationship” was rooted in that foundation.

13 For SSA to successfully recoup the Overpayment from the Post-
14 Petition Benefits, the SSA must establish that the Overpayment had both a
15 legally cognizable and logical relationship to the Post-Petition Benefits.
16 *Braun v. Bouma Dairy (In re Coast Grain–Bouma)* 2004 WL 2828472
17 (Bankr. E.D. Cal.). The SSA must also show that recoupment of the
18 Overpayment from Angwin’s Post-Petition Benefits would be an equitable
19 remedy. No other application of the recoupment doctrine would be
20 consistent with *Newbery Corp.* and *TLC Hospitals*.

21 **The Lee v. Schweiker case.** The main case that would tilt in
22 Angwin’s favor is the 3rd Circuit decision in *Lee v. Schweiker (In re Lee)*,
23 739 F.2d 870 (3rd Cir. 1984). Indeed, the ruling in *Lee* is so significant that
24 the SSA devotes a substantial amount of its brief trying to distinguish it
25 from applicable 9th Circuit law. However, the underlying rationale in the
26 *Lee* decision is worthy of consideration. The court in *Lee* explained the
27 distinction between the doctrines of setoff and recoupment. In *Lee*, the
28 Third Circuit Court of Appeal ruled that *post-petition* social security “old

1 age" benefit payments are not subject to recoupment *on account of*
2 *pre-petition overpayments* of social security "old age" benefit payments.

3 The decision in *Lee* does not rely as much on an analysis of whether
4 the claims arise from the same transaction, as on its determination of the
5 nature of the doctrine of recoupment; that recoupment must be based on
6 some kind of contractual relationship.⁹ *Lee* has been cited by at least one
7 bankruptcy court in the Ninth Circuit without disapproval and this court
8 does not find a conflict between *Lee* and the decision in *Newbery* with
9 regard to the issues now before the court.¹⁰

10 In *Lee*, the debtor sought to recover money that the SSA had
11 withheld from her checks both before and after filing her bankruptcy
12 petition. The bankruptcy court's decision in favor of the SSA was affirmed
13 by the district court. However, on appeal the Third Circuit reversed and
14 remanded in part. The district court had decided that the debts in question,
15 the overpayments to the debtor and the claim for future payments by the
16 debtor, "arose out of the same transaction—'Social Security benefits due to
17
18
19

20 ⁹As a caveat, the court is not suggesting here that recoupment would
21 automatically apply if the competing claims were contractually linked. While the
22 nature of the parties' relationship is a factor to be considered, it is not wholly
23 dispositive. Recoupment is an equitable doctrine which may be denied based on
the parties' conduct or other "equitable" factors regardless of the nature of
relationship between the parties.

24 ¹⁰The only opinion found on point from a court in the Ninth Circuit is *In re*
25 *French*, 20 B.R. 155 (Bankr. D.Or., 1982), still good law, finding that a debt for
26 overpayment of social security benefits was not excepted from the discharge and
27 that recoupment was not available for its recovery from post-petition benefit
28 payments ("[D]ebtor is entitled to summary judgment declaring that the debt
owing to SSA is discharged in bankruptcy and enjoining the government from
attempting to offset this obligation against post-bankruptcy Social Security
benefits").

1 [debtor.]”¹¹ In reversing, the Third Circuit distinguished the situation in the
 2 case from recoupment based on contracts.

3 The fact that the same two parties are involved, and that a
 4 similar subject matter gave rise to both claims, however, does
 5 not mean that the two arose from the “same transaction.” In
 6 bankruptcy, the recoupment doctrine has been applied
 7 primarily where the creditor’s claim against the debtor and the
 8 debtor’s claim against the creditor arise out of the same
 9 contract. In a number of cases involving the bankruptcy of
 10 healthcare providers, the court have allowed insurers to
 ‘recoup’ overpayments from amounts owed to the debtor
 post-petition under a contract providing for such recoupment.
 These contracts provided for advance payment to providers
 based on estimates of the amount which would ultimately be
 owed, subject to later correction. *The analysis used in these*
cases is based on the treatment of executory contracts in
bankruptcy.

11 *Id.*, emphasis added (citations omitted).

12 In situations where the government benefits are paid to individuals, courts
 13 have held that “a social-welfare statute entitling an individual to benefits is
 14 not a contract, and that the obligation to repay a previous overpayment is a
 15 separate debt subject to the ordinary rules of bankruptcy.” *In re Lee*, 739
 16 F.2d at 876.

17 We find the distinction persuasive. Social welfare payments,
 18 such as social security, are statutory “entitlements” rather than
 19 contractual rights. The purpose of these payments is to
 20 provide income to qualifying individuals. Although the
 paying agency can ordinarily recover overpayments, just as
 creditors can ordinarily obtain payment from a debtor’s future
 income, the Bankruptcy Code protects a debtor’s future
 income from such claims once a petition has been filed

21 *Id.*

22 In conclusion, *Lee* held that the SSA could not recoup previous
 23 overpayments from benefits payable after the petition was filed; the right of
 24 SSA to recover pre-petition debts should not be “treated as part of a
 25 ‘contract’ between the government and the debtor.” *Id.*

26 ///

27
 28 ¹¹On appeal, the court held that the SSA was entitled to retain, as a setoff,
 the amount withheld pre-petition.

1 In a Ninth Circuit Bankruptcy Appellate Panel case citing *Lee, In re*
 2 *California Cannery and Growers*, 62 B.R. 18 (9th Cir. BAP 1986), the
 3 debtor objected to recoupment, saying the claims did not arise from the
 4 “same transaction.” While the bankruptcy court had not made a specific
 5 finding of fact on that issue, in reversing on appeal to deny recoupment the
 6 court said it was clear that “the pre-petition debt that [the creditor] seeks to
 7 recover represents the final steps in several single transactions, while “[t]he
 8 post-petition claims of [debtor against the creditor] represent the first steps
 9 in a number of separate and distinct transactions. The goods in [the
 10 debtor’s] post-petition invoice are not the same goods as in [the creditor’s]
 11 pre-petition invoice.” *Id.* at 20.

12 In another Ninth Circuit Bankruptcy Appellate Panel opinion, *In re*
 13 *Harmon*, 188 B.R. 421 (9th Cir. BAP 1995), which granted a right to
 14 recoupment, the panel reversed the bankruptcy court’s decision and ruled
 15 that the Oregon State Accident Insurance Fund Corporation (“SAIF”) could
 16 use recoupment to reduce the debtor’s award for permanent disability by the
 17 excess amount she received from it on account of temporary disability.
 18 *Harmon* distinguished its holding from that in *Lee*, saying,

19 On the facts here, two awards were made, time-loss
 20 and permanent disability: on the one hand, income lost from
 21 work interruption, and on the other, loss of future
 22 income-earning capacity based on permanent disability. Each
 23 liability was asserted by the debtor pre-petition and were
 24 treated independently. The trial court concluded that the two
 25 awards should be considered as separate or independent
 26 transactions precluding application of recoupment. This
 27 analysis focused on the sequelae of the injury rather than on
 28 their common origin, which was the work-related injury.
 While there may be a facial issue as to whether the obligations
 between the parties arose from a single transaction thereby
 warranting recoupment, *logic requires the conclusion that*
both claims flow from the same prepetition injury. Thus,
whatever rights or remedies the debtor had, accrued
prepetition. Further, the court should view the claims of the
 parties as perceived by the unitary perspective of the Oregon
 statute, which created the remedies for these rights.

1 The liabilities at issue in the instant case are governed
2 by a statutory plan which provides coverage to all workers in
3 the State of Oregon for work-related injuries. The State of
4 Oregon intended to provide indemnity for employee injuries
5 in the work-place through a comprehensive statute governing
6 the rights and liabilities of employers and their employees.

7 *Id.* at 425-26, emphasis added (citations omitted).

8 **Application to the Present Case.** Turning now to the case at hand,
9 there is no dispute that Angwin was overpaid Disability Benefits prior to
10 November 2011 when the SSA discovered her change in marital status, and
11 there is no dispute that the SSA has a substantial unsecured claim in this
12 bankruptcy case for repayment of the Overpayment. However, in order to
13 exercise the doctrine of recoupment as a means to recover the Overpayment
14 from Post-Petition Benefits, the SSA would have to show that Angwin's
15 right to receive Post-Petition Benefits bears a substantial relationship to the
16 transactions and events by which she received the Overpayment. While the
17 case in *Lee* turned primarily on the court's conclusion that the relationship
18 between the parties was not contractual in nature, the test is broader in the
19 Ninth Circuit, and a contractual relationship, or lack thereof, is only one
20 factor to consider in the "substantial relationship" analysis.

21 Here, the Overpayment that occurred pre-petition appears to be
22 separate and distinct from Angwin's right to receive Post-Petition Benefits
23 and the court is not persuaded that the pre-petition transactions which
24 resulted in the ALJ Judgment bear a substantial relationship to Angwin's
25 post-petition eligibility for further benefits. It appears Angwin is still
26 disabled and otherwise eligible to receive Post-Petition Benefits. Those
27 benefits are based on Angwin's present condition, not on her past condition.
28 The mere fact that the Overpayment and the Post-Petition Benefits may
29 both flow from the same body of law, does not make them "substantially
30 related" for purposes of recoupment.

1 Looking at this issue from an equitable perspective, the SSA alleges,
2 “It would be unjust to insist that Social Security to [sic] pay additional
3 disability payments to the Defendant without requiring that the Defendant
4 fulfill her obligations to pay back the overpayment.” (First Amended
5 Complaint, ¶ 17.) It is difficult for this court to understand how the United
6 States of America, with all of its resources, can be “unjustly” treated by a
7 single individual who is apparently unable to support herself. Angwin
8 seeks to discharge her “obligation” to repay the SSA under a body of law,
9 the Bankruptcy Code, which the United States enacted long ago specifically
10 to give individuals the ability to discharge such obligatins and move on with
11 their lives.

12 The court is hereby closing the door on the SSA’s recoupment
13 theory, however, the SSA is not without a remedy. The ALJ found that
14 Angwin was “at fault” for not properly reporting her change in marital
15 status, but that does not automatically mean that she is a bad person or that
16 she consciously intended to mislead the SSA. In its first claim for relief, the
17 SSA seeks a determination that its Overpayment claim should be excepted
18 from discharge based on actual fraud. § 523(a)(2)(A). The degree of
19 Angwin’s “fault” will be more thoroughly developed in the context of the
20 “fraud” claim. If the SSA is unable to prove its fraud claim, then equity
21 would not be served in imposing the same result on Angwin through an
22 equitable remedy. If Angwin committed actual fraud, then the SSA’s
23 “equitable” argument will be vindicated in its first claim for relief and the
24 Overpayment claim will be nondischargeable on legal grounds.


25 **CONCLUSION.**

26 The Motion seeks summary adjudication of the SSA’s right to
27 recoup the Overpayment from Angwin’s Post-Petition Benefits. The
28 relationship between Angwin and the SSA is not contractual. Rather, it is

1 based on social welfare statutes intended specifically to provide ongoing
2 support for disabled individuals who cannot support themselves. Based on
3 the weight of authority cited above, and consideration of the factors which
4 bear upon the doctrine of recoupment, the court is persuaded that the
5 Overpayment and the Post-Petition Benefits are not part of the "same
6 transaction" and do not share such a "logical relationship" that recoupment
7 should be applicable. The court is further persuaded that "equity" does not
8 compel application of the recoupment doctrine on these facts.

9 Based on the foregoing, the SSA's Motion for summary judgment
10 will be denied with respect to the second claim for relief in this adversary
11 proceeding. The second claim for relief will be dismissed. By separate
12 order, the court's stay of the first claim for relief will be lifted. A new
13 status conference will be set and the adversary proceeding may proceed to
14 trial on the first claim for relief.

15 Dated: April 5, 2016
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19 _____
20 W. Richard Lee
21 United States Bankruptcy Judge
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Instructions to Clerk of Court
Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith to the parties below. The Clerk of Court will send the Order via the BNC or, if checked x , via the U.S. mail.

Debtor(s), Attorney for the Debtor(s), Bankruptcy Trustee (if appointed in the case), and X Other Persons Specified Below:

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